UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		Not For Publication
In re	:	Chapter 11
ENRON CORP., *et al*.,	:	Case No. 01-16034 (AJG)
	:	(Confirmed Case)
Reorganized Debtors.	:	
ENRON CORP.,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 03-92677
J.P. MORGAN SECURITIES INC., *et al*.	:	
Defendants.	:	

ORDER GRANTING MOTION OF EARTHLINK, INC. FOR PARTIAL RECONSIDERATION OF THE OPINION GRANTING ENRON'S MOTION FOR LEAVE TO AMEND ITS COMPLAINT

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ARTHUR J. GONZALEZ
United States Bankruptcy Judge

EarthLink, Inc. ("EarthLink") has moved the Court pursuant to Local Bankruptcy Rule 9023-1(a) to reconsider (the "Motion for Partial Reconsideration") one factual finding contained in the Court's Opinion Granting Plaintiff's Motion for Leave to Amend its Complaint Against EarthLink (the "Opinion"), dated December 15, 2006.[1] Specifically, EarthLink asks the Court to reconsider the factual finding that Enron Corp. ("Enron") was not aware that there was an additional entity involved in the commercial paper prepayment transaction (the "Transaction") at issue in the Opinion. Enron argues that it never made this concession attributed to it in the Opinion – "EarthLink concedes that Enron was not aware that there was an additional entity that it must name as a transferee regarding the Transaction at issue at the time of filing the First Amended

[1] Familiarity with the earlier Opinion and the facts contained within is assumed.

Complaint." EarthLink argues that this is a matter of dispute and that it should be allowed to conduct discovery into whether Enron knew that defendant Trusco Capital Management ("Trusco") was acting as a broker on behalf of a customer in connection with the Transaction.

Enron's response to the Motion for Partial Reconsideration does not squarely address EarthLink's motion because Enron focuses on a discussion of whether Enron knew of *EarthLink's* identity in connection with the Transaction. That knowledge, or lack thereof, is not disputed in the Motion for Partial Reconsider.[2] As EarthLink's reply states "[t]he fundamental reason why partial reconsideration is warranted is *not* that the Court erred in finding that Enron did not know that that EarthLink was Trusco's customer. It is that the Court erred in finding that Enron did not know that Trusco had *a customer* that should have been named as a defendant." EarthLink summarized its position in its Motion for Partial Reconsideration, stating its consistent position has been that "while Enron may not have known that Trusco's customer was EarthLink, Enron may have known that Trusco was or likely was acting for a customer."

In reviewing the papers and arguments that formed the basis for its earlier Opinion, the Court agrees with EarthLink that EarthLink did not concede that "Enron was

[2] There is ample support showing that EarthLink has not disputed that Enron was unaware of EarthLink's role in the Transaction prior to filing the First Amended Complaint. Enron has consistently maintained, with no opposition, that it became aware of EarthLink's identity concerning the Transaction after filing the First Amended Complaint. In fact, EarthLink agreed with Enron as to how Enron learned of EarthLink's identity. For example, EarthLink's counsel stated at the December 15, 2005 hearing that "after we were hired in January of 2004, we filed a motion to dismiss on behalf of Trusco and we mentioned in our motion to dismiss that, in fact, the transaction . . . was for a customer. She (Enron's counsel) then called up to find out who the customer was." *See* Dec. 15 Transcript, Afternoon Session, at 56. Further, in its memorandum opposing Enron's motion to amend, EarthLink states that "[t]he purported 'mistake' Enron relies upon is its lack of knowledge that EarthLink was the customer on whose account a named defendant (Trusco) was trading in the commercial paper of Enron." *See* Objection and Memorandum of Law of EarthLink, Inc. In Opposition to Motion of Enron Corp. for Leave to Amend Its Complaint, at 2.

not aware that there was an additional entity that it must name as a transferee regarding the Transaction at issue at the time of filing the First Amended Complaint."

The Court will grant EarthLink's Partial Reconsideration Motion and will amend its prior Opinion to reflect that EarthLink made no concession and the Court made no factual determination that Enron was not aware that there was an additional entity that it must name as a transferee regarding the Transaction at issue at the time of filing the First Amended Complaint. Accordingly, it is

ORDERED that the Court's prior Opinion regarding EarthLink's concession on page 12 is hereby amended to reflect that the Court has made no determination that EarthLink has conceded that Enron was not aware that there was an additional entity that it must name as a transferee regarding the Transaction at issue at the time of filing the First Amended Complaint; and it is further

ORDERED that the Opinion will be modified as follows

On page 12, the sentences in the carryover paragraph

> In contrast, EarthLink concedes that Enron was not aware that there was an additional entity that it must name as a transferee regarding the Transaction at issue at the time of filing the First Amended Complaint. In its February 19, 2004 motion to dismiss, after the statute of limitations expired, Trusco disclosed the involvement of EarthLink in the Transaction. As a result, there is no dispute that Enron did not become aware of the EarthLink's identity until then. Such information was exclusively within the control of Trusco. Thus, at the time of filing the First Amended Complaint, Enron was unaware of EarthLink's potential involvement in the Transaction.

will be modified to read

> In contrast, there is no dispute that Enron did not become aware of EarthLink's identity in the transaction until after filing the First Amended Complaint. In its February 19, 2004 motion to dismiss, after the statute of limitations expired, Trusco disclosed the involvement of EarthLink in the Transaction. Such information was exclusively within the control of

Trusco. Thus, at the time of filing the First Amended Complaint, Enron was unaware of EarthLink's potential involvement in the Transaction.

Dated: New York, New York
March 1, 2007

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE